

EXHIBIT 8(b)

P.J. Corless

March 25, 2008

Pomona, NY

Page 13

1 P.J. Corless

2 Q So any steep slope permit that's
3 required in conjunction with a subdivision --

4 A Any.

5 Q -- has to be obtained from the
6 planning board?

7 A Yes sir.

8 MR. HARRINGTON: Put that aside
9 for a second and let me show you what
10 we will mark as Exhibit B for
11 identification.

12 (Copy of chapter 118 of the
13 Village Code re Subdivision Land was
14 marked Defendant's Exhibit B for
15 identification.)

16 Q Mr. Corless, I am going to show you
17 what we marked as Exhibit B, and again I'll
18 represent to you it is a copy of chapter 118 of
19 the Village Code entitled Subdivision Land, which
20 we secured from the Village's website. If you
21 could just look at it, and without going through
22 it in detail, are you generally familiar with
23 chapter 118 of the Village Code?

24 A I am.

25 Q That's the chapter that governs

P.J. Corless

March 25, 2008

Pomona, NY

Page 14

1 P.J. Corless

2 subdivision approvals, correct?

3 A That's correct.

4 Q In the Village of Pomona, the
5 planning board is the authority that approves
6 subdivision applications?

7 A It is, yes.

8 Q If you look at section 118-5, on the
9 second page it states that, "No building permit
10 can be issued for a single-family home until
11 final subdivision approval has been issued by the
12 planning board," correct?

13 A Correct.

14 Q And that's generally true in most
15 municipalities, correct?

16 A In general. Sometimes older
17 ordinances allow model homes, but ours does not.

18 Q If you go to 118-9, it's a
19 definition section?

20 A Yes.

21 Q And under the definition of
22 Subdivision plat, or final plat, you see that?

23 A I don't see -- I see major
24 subdivision, minor subdivision. Subdivision plat
25 or final plat, okay.

P.J. Corless

March 25, 2008

Pomona, NY

Page 15

1 P.J. Corless

2 Q That states, quote, "A drawing in
3 final form, showing a proposed subdivision and
4 containing all information or detail required by
5 law and by these regulations to be presented to
6 the planning board for approval, and which if
7 approved may be duly filed and recorded by the
8 applicant in the office of the County Clerk."

9 Now, can you please explain for me,
10 in general, the process an applicant goes through
11 in securing subdivision approval say, for
12 example, a forty lot subdivision, generically the
13 process?

14 A Applications are taken from the
15 village clerk for subdivision. We, in this
16 village we use the county standard form for
17 realty subdivision. And that's completed and
18 submitted with an environmental impact assessment
19 form, usually the long form, because of this you
20 say forty lots.

21 Q Right.

22 A Then the engineer together with a
23 surveyor will map out the properties in terms of
24 topography and boundary lines, and then lay out
25 roads horizontally, and then do some calculations

P.J. Corless

March 25, 2008

Pomona, NY

Page 16

1 P.J. Corless

2 about size of lots. We have a minimum of one
3 acre, actually 40,000 square feet not 43,560, in
4 our village, so they would start laying out lots.
5 There's minimum widths and minimum depths. And
6 they would go through that process and submit
7 what's called a sketch plat and compare that
8 layout.

9 The guidance would be from this
10 section 118, our law, which spells out the widths
11 of streets and the lengths of cul-de-sacs and the
12 curvature, horizontal and vertical, a whole bunch
13 of standards from which the geometry is based on
14 for the breaking up of a large parcel into
15 several smaller parcels.

16 And then when it is submitted for
17 sketch, it goes through a series of iterations on
18 changes, either brought on by the village
19 comments or by more information being collected
20 by the applicant related to traffic, to drainage,
21 to water, sewer, all the utilities. So it's an
22 involved process, generally takes a couple of
23 years for that big a project.

24 Q Does there come a time that the
25 applicant actually submits a formal plat or plan

P.J. Corless

March 25, 2008

Pomona, NY

Page 17

1 P.J. Corless
2 to the planning board for consideration?

3 A Yes.

4 Q Does there come a time that the
5 planning board holds a public hearing with
6 respect to that issue?

7 A Yes, we hold both preliminary and
8 final, and nowadays for environmental impact, so
9 we have three.

10 Q Just so I'm clear, that initial map
11 is known as a preliminary subdivision map,
12 correct?

13 A Yes, in village law it's
14 preliminary, although we treat it as a sketch,
15 which is an old fashioned way. But it's
16 preliminary, yes.

17 Q If we look at Section 118 in the
18 Definition section, there is a definition for
19 Preliminary plat?

20 A Yes.

21 Q That is the initial drawing that
22 you're referring to, correct?

23 A That's correct.

24 Q And that's distinct from a final
25 plat as we discussed a moment ago, correct?

P.J. Corless

March 25, 2008

Pomona, NY

Page 18

1 P.J. Corless

2 A That's correct.

3 Q The final plat is in fact the plat
4 that's been ultimately approved by the planning
5 board, correct?

6 A Correct. Most villages issue a
7 preliminary approval on the plat which fixes
8 horizontal control and then they can go on to
9 other details.

10 Q Let's talk about that.

11 A Okay.

12 Q You mentioned a moment ago that the
13 planning board conducts a public hearing?

14 A Yes.

15 Q And presumably hears testimony from
16 both the applicant and the public with respect to
17 a proposed subdivision?

18 A Correct.

19 Q Then there comes a time that they
20 close the public hearing, correct?

21 A Usually.

22 Q At some point?

23 A Yes.

24 Q At that point in time, the planning
25 board, within a statutory period of time, has to

P.J. Corless

March 25, 2008

Pomona, NY

Page 19

1 P.J. Corless

2 vote on whether to approve or not approve that
3 preliminary subdivision?

4 A That's correct.

5 Q And if the preliminary subdivision
6 plan is approved, what is in fact approved at
7 that point? Again, using a 40 lot subdivision as
8 an example.

9 A Explicitly the horizontal alignments
10 are fixed, the number of lots are, quote,
11 established, and the road location again
12 horizontal control. And usually a conceptual,
13 water, sewer, drainage, utilities, are
14 established, and environmental issues have been
15 resolved to get to that point.

16 Q Now, with respect to the issue of
17 steep slopes?

18 A Yes.

19 Q In the preliminary subdivision
20 review phase, what if any review is given by the
21 planning board to steep slopes, as it relates to
22 lot count and road construction?

23 A Well, the surveyor would identify
24 and show on various hatching means on the map
25 steep slope, extremely steep slope, you know,

P.J. Corless

March 25, 2008

Pomona, NY

Page 20

1 P.J. Corless

2 those kind of things, and based upon the geometry
3 of the site, he would attempt to lay out lots
4 without going into extremely steep slopes and
5 certainly avoid them for roads and those kind of
6 things. So it's an involved process.

7 Q How about with respect to very steep
8 slopes? And my question is with respect to very
9 steep slopes, if a lot is comprised of entirely
10 property or land that's characterized as very
11 steep slope under the ordinance, what impact if
12 any, would that have?

13 A He would lose his, some of the area
14 proportionally to the amount of steep slopes. We
15 don't allow them to build the roads across the
16 steep slopes, unless there is no alternative, and
17 we can't prevent the guy from using his property.
18 But we do deduct, or the code refers to a
19 deduction in area, and it's spelled out in the
20 ordinance.

21 Q Okay. Now, once a preliminary plat
22 is approved by the planning board, what happens
23 next in the subdivision approval process?

24 A Well, once preliminary is received,
25 the process is essentially on the way to

P.J. Corless

March 25, 2008

Pomona, NY

Page 21

P.J. Corless

1 completion. All the major issues that could
2 prevent approval have been resolved to the
3 satisfaction of the village planning board, and
4 the completion of all kinds of details related to
5 engineering and perhaps even legal issues are
6 then put through the hoops. All the details are
7 furnished and they're reviewed, and then we go
8 back for --
9

10 And when they are satisfied to all
11 the agencies, there are outside agencies that we
12 refer maps to, then we set it up again for a
13 public hearing.

14 Q If those details aren't resolved,
15 can the preliminary plat be approved?

16 A No. Usually it's a conditioned
17 preliminary approval.

18 Q So if I'm clear, preliminary
19 approval is just that, it's a preliminary
20 approval, it's not a final approval, and it's
21 subject to certain conditions?

22 A Yes, you can imagine that there are
23 conditions that the planning board may want the
24 applicant to get approval of another agency, and
25 another agency may not want to review the map

P.J. Corless

March 25, 2008

Pomona, NY

Page 22

1 P.J. Corless

2 until there is a preliminary map given, approval
3 given. So you're caught between jurisdictions.
4 So they would say, we will give you preliminary
5 approval based upon your submitting to New York
6 State Department of Transportation and getting
7 approval for the traffic, whatever.

8 Q Okay. Let's go back to the steep
9 slopes ordinance, in you could, that's chapter
10 119, and if you could refer to section 119-7. I
11 am going to read it into the record and then ask
12 you a couple of questions.

13 A Yes.

14 Q Subsection (a) states, quote, "It is
15 the intent of this chapter to incorporate the
16 consideration of steep slope protection into the
17 village's existing land use and development
18 approval procedures in conjunction with the
19 procedures of the New York State Environmental
20 Quality Review Act.

21 "To the maximum extent possible the
22 review hearings and decisions upon any
23 application process under this chapter will run
24 concurrently with similar procedures that the
25 approving authority may undertake in connection

P.J. Corless

March 25, 2008

Pomona, NY

Page 23

1 P.J. Corless
2 with the other applications that are directly
3 related."

4 Now, are you familiar with that
5 provision?

6 A I am.

7 Q And with respect to securing steep
8 slope -- I am going to refer to it as a steep
9 slope permit, if that's okay with you?

10 A Yes.

11 Q In conjunction with obtaining steep
12 slope permits, can those permits be obtained in
13 conjunction with the subdivision review process?

14 A They are obtained with, the site
15 plan incorporates that, quote, steep slope
16 requirements in the review process, they are not
17 issued separately.

18 Q Let me just put a finer point on
19 that. With respect to the process as you've
20 defined it a moment ago, before final subdivision
21 approval is granted by the planning board, is
22 there anything that would prohibit an applicant
23 from obtaining the necessary steep slope permits
24 for a, say, a 40-lot subdivision, given this
25 section?

P.J. Corless

March 25, 2008

Pomona, NY

Page 24

1 P.J. Corless

2 A Again, for the sake of clarity and
3 detail, if you were to have a mythical 40-lot
4 subdivision, the applicant by his engineer and
5 attorney, would put on a mythical house, a 40 by
6 60 box, and show grading for that and show where
7 that is in relation to steep slopes, and where
8 the driveways are and where the utilities
9 are. And when final subdivision is granted, that
10 lot would have a steep slope approval for that
11 mythical 40 by 60 box.

12 In the real world the house might be
13 40 by 72 or 32 and 75, and all kinds of -- so we
14 make them come back, whenever it's bigger, come
15 back for another steep slope permit and another
16 public hearing. So you could go away with
17 approval for 40 lots, but you really don't have a
18 specific site plan approval until you come up
19 with a real house.

20 Q Unless, of course, you built the
21 real house within the confines of --

22 A Correct.

23 Q In certain jurisdictions that's
24 known as a building envelope?

25 A No, the building envelope is the

P.J. Corless

March 25, 2008

Pomona, NY

Page 25

1 P.J. Corless

2 maximum extent of the house. This would be the
3 footprint.

4 Q Okay.

5 A So in this village, if you make the
6 footprint of the real house smaller, than the
7 building inspector is allowed to issue a building
8 permit. If the house is bigger in any dimension,
9 then it's back to the planning board. So there
10 are some fine lines.

11 Q I understand?

12 A And it varies.

13 Q At the end of the day, in order to
14 secure final subdivision approval, an applicant
15 must obtain steep slope approval for the mythical
16 houses that are depicted on each lot?

17 A Correct.

18 Q If the developer subsequently wants
19 to exceed the boundaries of that mythical house,
20 he, she, or it has to come back to the planning
21 board to obtain a new steep slope permit?

22 A But he does have the right to build
23 on the mythical house footprint.

24 Q Okay?

25 A Not the building envelope.

P.J. Corless

March 25, 2008

Pomona, NY

Page 26

1 P.J. Corless

2 Q Okay. And the steep slope permits
3 are the types of the final details that you
4 talked about between preliminary subdivision
5 approval and final approval?

6 A Right.

7 Q If we look at section 119-7, it's
8 fair to say that that articulates the procedures
9 for the review and the making of the decision
10 with respect to steep slopes?

11 A Almost more than enough detail, yes.

12 Q It goes on for --

13 A Pages.

14 Q And it's rather elaborate; is it
15 not?

16 A Yes.

17 Q It involves an additional public
18 hearing, correct?

19 A Correct.

20 Q And it involves a posting of a
21 letter of credit, correct?

22 A Yes.

23 Q And it also permits the planning
24 board to require a phased site plan review?

25 A Yes.

P.J. Corless

March 25, 2008

Pomona, NY

Page 27

1 P.J. Corless

2 Q Whether or not you recommend it or
3 not?

4 A Correct, that's a new amendment to
5 the local law.

6 Q Okay.

7 A It's not phase site plan review,
8 it's a phase site plan construction.

9 Q Let's look if you could, because I'm
10 new to this ordinance. Under section C6U.

11 A 119-7?

12 Q Yes.

13 A C6U, okay.

14 Q In the first sentence it says,
15 quote, "The planning board shall have the
16 authority to require phase site development plan
17 review, whether or not recommended by the
18 building inspector or village engineer and
19 regardless of the source of the information upon
20 which the planning board bases its decision to
21 require phase site development plan review."

22 What does that mean?

23 A Those words talk about the planning
24 board reviewing the site plan in various
25 phases. In actuality, what the planning board